THE HON'BLE SRI JUSTICE VENKATESWARLU NIMMAGADDA

WRIT PETITION No.24173 OF 2020

ORDER:-

1. The present Writ Petition is filed under Article 226 of the Constitution of India, seeking the following relief:

> *"... to issue appropriate writ or order or direction more particularly one in the nature of writ of mandamus declaring the order passed by the 3rd Respondent in Rc.No.875/R2A/2020, dated 20.03.2018 imposing the punishment of two annual grade increments with cumulative effect and also the proceedings issued by the 3rd Respondent dated 14.07.2020 to recover an amount of Rs.27,850/- from me and also that the order passed by the 2nd Respondent dated 03.07.2019 in Rc.No.4781/E4-C/2018 as wholly illegal, arbitrary and unjust and consequently set aside the above proceedings in the interest of justice and to pass such order or orders ..."*

2. The case of the petitioners is as follows:

3. The petitioner herein working as staff nurse since 1993 under the Jurisdiction of Respondent No.4. During the period from 24.06.1997 to 18.07.2009, the petitioner worked as staff nurse at Primary Health Centre, Ubalanka, East Godavari District and thereafter from 18.07.2009 she worked as Staff Nurse at Government Hospital at Alamuru, East Godavari District. From 16.09.2003 to 13.11.2003, she worked as Incharge pharmacist at PHC Ubalanka in place of one Ms.K.A.Manga, Pharmacist Grade-II since the said person was sent on deputation to GGH, Mangalagiri, Guntur District. In the entire service of the petitioner there are no complaints against her and she has been discharging her functions without any remarks.

4. While so, the Multipurpose Health Extension Officer, Ubalanka PHC gave a complaint against the petitioner alleging that certain items are missing in PHC Ubalanka, while she was working as staff nurse at PHC Ubalanka. Based on the said complaint the Respondent No.3 has issued an order vide RC.No.875/R2A/10, dated 21.01.2013 to initiate departmental proceedings by conducting an enquiry in accordance with the procedure laid down under Rule 20 of AP Civil Services (Classification, Control and Appeal) Rules 1991 (for short "APCS (CCA) Rules, 1991"). According to the Article of charges issued by Respondent No.3, the petitioner committed certain Irregularities as mentioned therein.

5. The Regional Director of Medical and Health Services Zone-II, Rajamahendravaram, East Godavari District / Respondent No.3 filed counter affidavit wherein it is stated that the petitioner was appointed as Staff Nurse w.e.f 16.08.1993. While she had been worked as Staff Nurse from 24.06.1997 to 18.07.2009, she was kept in charge to the post of Pharmacist Gr-II at Primary Health Centre, Ubalanka, East Godavari District. It is further stated that while the petitioner was kept in charge to the post of Pharmacist Gr-II, a complaint was received against the petitioner alleging that certain items received by her are not handed over to her successor and also failed to maintain stock register which was entrusted to her. Then Respondent No.3 had issued orders appointing an Administrative Officer, office of the District Medical and Health Officer, Kakinada as enquiry officer to conduct preliminary enquiry on

the above allegations vide Rc.No.875/R2A/2010, dated 15.10.2012. The enquiry officer has conducted enquiry and submitted enquiry report stating that certain irregularities are found to be correct against the petitioner during the enquiry vide Rc.No.2342/E2/2012, dated 06.12.2012. Due to which Respondent No.3 had issued articles of charge to the petitioner vide Rc.No.875/R2A/2010, dated 21.01.2013 under Rule-20 of the APCS (CCA) Rules-1991 by calling her written statement of defense. It is further stated that the petitioner submitted her written statement of defense on 29.01.2013 to Respondent No.3, denying all the allegations leveled against her. Under Rule 20(2) of APCS (CCA) Rules, 1991, Respondent No.3 had issued orders appointing the Additional District Medical and Health Officer (Tribal), Rampachodavaram, East Godavari District to conduct regular departmental inquiry on the articles of charge issued to the petitioner vide Rc. No.875/R2A/2012, dated 08.12.2015.

6. It is further stated that the Enquiry Officer / Additional District Medical and Health Office (Tribal), Rampachodavaram, East Godavari District had conducted regular inquiry against the petitioner and submitted the Inquiry Report vide Rc.No.104/ADM& HO(T) /2015, dated 31.07.2016 and opined that the charge framed against the petitioner is held proved.

7. It is further stated that the petitioner submitted her explanation on 16.10.2017 raising certain points on her defense. On verification of the explanation, Respondent No.3 has issued orders again appointing the

Zonal Officer (Malaria), Rajamahendravaram as enquiry officer to conduct re-enquiry on the allegations leveled against the petitioner vide Rc.No.875/R2A/2010, dated 29.11.2017. The Zonal Officer (Malaria), Rajamahendravaram has conducted re-enquiry and submitted the enquiry report stating that there are no new grounds to consider the objections raised by the petitioner and the earlier report holds good vide Rc.No.16/Enq/ZMO/2017, dared 03.02.2018.

8. Learned counsel for the petitioner submits that the charge memo issued to the petitioner where under charge was framed neither specific nor illustrated any date of offence said to have been committed by the petitioner and the entire charge is in general and omnibus allegations were made relating to entire period of work at Ubalanka PHC i.e. 1997 to 2009. Such a charge memo with bold and general allegation is contrary to the Rule 20 of the APCS (CCA) Rules, 1991. Basing upon such a charge memo, the Respondent authorities neither conducted any enquiry nor impose any punishment against the petitioner. He also contended that the Respondent Authorities not observed the principles of natural justice while conducting enquiry as per Rule 20 of the APCS (CCA) Rules, 1991. Even as per the counter affidavit after submission of explanation by the petitioner to the 1st enquiry report they appointed 2nd enquiry officer for re-enquiry. Pursuant to the report of 2nd enquiry, the present punishment was imposed. In respect of re-enquiry / 2nd enquiry neither the petitioner was issued any notice nor allowed the petitioner to participate in the enquiry which is conducted behind back of the

petitioner and in violation of principles of natural justice which is also contrary to two preliminary enquiries which are conducted on 22.06.2010 and 15.11.2012.

9. The 1st preliminary enquiry report submitted by the enquiry officer Dr. Prasanna Kumar in favour of the petitioner stating that nothing found any material. Later another enquiry report submitted, pursuant to which the punishment was imposed was based upon the alleged 2nd preliminary enquiry report. While so, neither the preliminary enquiry report nor the final enquiry report provided to the petitioner to submit an explanation before framing charges or before issuing any notice for imposing punishment is also contrary to Rule 20 of the APCS (CCA) Rules, 1991.

12. It is further contended that the subject allegations at charge memo which are general in nature referable to the year 2003 but charge memo was issued in the year 2015 after lapse of 12 years but there is no reasonable explanation was offered by the Respondents either in the enquiry report or in the charge memo as such the petitioner is prejudiced by such a abnormal delay. He further contended that the entire final / Regular enquiry did not conduct as per the Rule 20 of the APCS (CCA) Rules, 1991. No opportunity was provided to the petitioner at the time of evidence of the witnesses and also to cross examine any witnesses and no document and no report which was relied by the enquiry officer neither communicated/ served nor informed to the petitioner. As such the entire enquiry is vitiates on the ground of non observation of

principles of natural justice. As per the Rule 20 of APCS (CCA) Rules, 1991, the entire report should be communicated to the petitioner for submission of her explanation or her objections before contemplating imposition of punishment. But, in the case in hand, the authorities communicated the enquiry report along with notice to impose major penalty.

10. It is further contended that the action of the respondents imposing double penalty for the same charge is also contrary to the APCS (CCA) Rules, 1991. In the case in hand, Respondent No.3 issued proceedings dated 20.03.2018, imposing major punishment of deductions of two annual grade increments with cumulative effect and also the proceedings dated 14.07.2020 to recover an amount of Rs.27,850/- from the salary of the petitioner. Therefore, in view of the said violation, the entire enquiry as well as imposing of major punishment apart from recovery proceedings are liable to be set aside.

11. Learned counsel for the petitioner further contended that the appeal filed by the petitioner is negatived without considering the explanation and without giving reasons except stating that awarding major punishment by the appointing authority is hold good as there are no grounds for review, for which he relied upon a ratio rendered by the Hon'ble Apex Court in ***Anant R. Kulkarni vs. Y.P. Education society and others***[1] Therefore, such an order without any reasons and without considering the explanation of the petitioner is also liable to be set-aside.

[1] (2013) 6 SCC 515

12. Learned Government Pleader for Services-IV submits that the petitioner was provided an ample opportunity and accordingly she submitted her explanation on 16.10.2017. In view of the said explanation, the Respondents are conducted re-enquiry. Therefore, the allegation of the petitioner that no opportunity was provided is not correct. The allegation of the petitioner that no opportunity was provided to the petitioner when conducting re-enquiry is also not correct. Since the re-enquiry do not based upon new enquiry / any new grounds. He further contended that the petitioner was issued notice by Respondent No.3 before the punishment as contemplated under Rule 20 of the APCS (CCA) Rules, 1991, for which the petitioner also submitted her explanation pursuant to the notice for punishment. He further submits that the major punishment of two annual grade increments with cumulative effect was awarded. The other proceedings to recover an amount of Rs.27,850/- is only consequential to make good for the loss caused to the Government exchequer in terms of G.O.Ms.No.335, GA(Ser-C), Department, dated 04.08.2005, as such the consequential / subsequent proceedings cannot be treated as the 2nd punishment.

13. The appeal filed by the petitioner is rightly considered by the Appellate Authority after providing opportunity to the petitioner. The said appeal was rejected on 03.07.2019. Confirming the punishment orders of Respondent No.3 dated 20.03.2018 or in conformity with the APCS (CCA) Rules, 1991.

14. Learned Government Pleader for Services-IV further submits that the entire enquiry and imposition of penalty and also issuance of proceedings for recovery of money are in accordance with the guidelines issued under G.O.Ms.25, GA(Ser-C) Department, dated 03.02.2004 and G.O.Ms.No.335, GA(Ser-C), Department, dated 04.08.2005 and also strictly following the procedure as contemplated under Rule 20 of the APCS (CCA) Rules, 1991, for which he relied upon a ratio rendered by the Hon'ble Apex Court in ***State of Uttar Pradesh and others vs. Rajith Singh.***[2] As such the present writ petition is liable to be dismissed.

15. Heard the learned counsel for the petitioner and the learned Government Pleader for Services-IV and also perused the material placed on record.

16. On perusal of the material on record, it appears that the charge framed against the petitioner pursuant to the charge memo is not specific, definite and properly descripted and it is in general in nature with omnibus allegations relating to her entire period of service at particular station i.e.Ubalanka Primary Health Centre for the period from 1997 to 2009, such a charge cannot be enquired and which is contrary to Rule 20(3)(i) of APCS(CCA) Rules, 1991.

17. It is clear and categorical that the charge against the petitioner is not specific and distinct and not in accordance with the Rule 20(3)(i) of the APCS (CCA) Rules, 1991. Basing upon such charge the disciplinary

[2] 2022 SCC Online SC 341

proceedings cannot be proceeded further as held by the Hon'ble Apex Court as well as this Court.

18. It is also observed from the material placed before the Court that the respondent authorities conducted regular enquiry and after conducting enquiry, the petitioner was provided an opportunity of submission of explanation to the said enquiry. After submission of such explanation without concluding the same, the Respondent authorities again appointed 2nd enquiry officer and conducted re-enquiry pursuant to which the present punishment was imposed, but the petitioner was neither informed about the 2nd enquiry officer nor served any report nor provided any opportunity of hearing or explanation for rebuttal of the 2nd enquiry which is in violation of principles of natural justice and also in violation of Rule 20 of the APCS (CCA) Rules, 1991.

19. Therefore, in the absence of any evidence to show that even after appointment of 2nd enquiry officer the respondent authorities observed the principles of natural justice and conducted the subject regular enquiry in accordance with Rule 20 of the APCS (CCA) Rules, 1991 is fatal and erroneous action of part of the Respondents.

20. It is further observed and as contended by the learned counsel for the petitioner that there is an inordinate delay in initiation of issuing charge memo i.e. after lapse of 12 years.

21. Admittedly, the subject incident is relate to the year 2003 but the charge memo was issued in the year 2015 without there being any reasonable explanation, which is also contrary to the APCS (CCA) Rules,

1991 and also the limitation prescribed for completion of disciplinary proceedings as envisaged under the APCS (CCA) Rules, 1991 and G.O. issued time and again by Respondent No.1. As per the APCS (CCA) Rules, 1991 and G.O., the entire disciplinary proceedings should be completed within six months only.

22. Admittedly in case in hand, the subject enquiry as well as final proceedings were issued contrary to the Rules and G.O.s as mentioned above. Therefore, the inordinate delay in conducting and completing disciplinary proceedings is nothing but causing mental agony and also causing damage to the reputation to the service of the petitioner.

23. The other contention of the learned counsel for the petitioner that even in regular enquiry as conducted by the respondent authorities in which the petitioner neither provided an opportunity to participate in the said enquiry nor provided any opportunity to cross examination of any witnesses of the enquiry and neither any document nor enquiry report was furnished even for submission of explanation / rejection as contemplated under Rule 20 of APCS (CCA) Rules, 1991 is valid and acceptable, since there is no evidence was brought in by the Respondents. As such the entire enquiry said to have been conducted by the Respondents is only farce and just as format but not in accordance with law.

24. As per Rule 20 of the APCS (CCA) Rules, 1991, the Respondents shall furnish documents as well as enquiry report calling for any explanation or objections against the said report. But in the case in

hand the authorities neither furnished the report or documents nor observed principles of natural justice as required in compliance of Rule 20 of the APCS (CCA) Rules,1991 and straightway issued notice regarding imposing major punishment is contrary to the procedure as contemplated under Rule 20 of APCS (CCA) Rules, 1991 and vitiates the manner and method of conducting entire disciplinary proceedings.

25. Finally, as contended by the learned counsel for the petitioner that the major punishment awarded by the Respondents vide proceedings dated 20.03.2018 is disproportionate to the offence committed by the petitioner is also valid and acceptable and even on the ground apart from major punishment of reduction of two annual grade increments with cumulative effect and also issuing subsequent proceedings dated 14.07.2020 for recovery of an amount of Rs.27,850/- can be construed as double punishment / double jeopardy and the same cannot be imposed and two punishments cannot be imposed for the same offence / same charge which is violation of Article 22 of the Constitution of India. In the case in hand, even there is no charge against the petitioner in relation to any misappropriation and in the absence of same, imposing recovery of proceedings is vitiates the entire disciplinary proceedings.

26. Learned counsel for the petitioner also contended that the appeal of the petitioner is negatived without considering the explanation and without giving any reasons except stating that awarding major punishment by appointing authority is holds good and there are no

grounds for review or interference is also contrary to the ratio as laid down by the Hon'ble Apex Court in ***Anant R. Kulkarni vs. Y.P. Education society and others***, wherein it is held as follows:

27. The Tribunal examined all the issues involved, and recorded its specific findings as under:

"The charge No.11 is in respect of excessive telephone bills. The telephone bill for the academic year 1999-2000 is Rs.3931/-. According to Management this is excessive bill. The charge is vague. The explanation given by appellant that specifically no call was made for private purpose. The objection regarding call at Chennai is properly explained that this call was made to the Institute of Brilliant Tutorials as it was required for the students of Xth standard for guiding them for career for Engineering. The Institute by names Brilliant Tutorials is famous well known academy and some phone calls made to it are well within the powers of Head Master. The total bill of Rs.3931/- for a High School during a year cannot be said to be excessive particularly when many of the calls are made to Pune and Thane. These calls have properly been explained that Writ petition was filed against the school and these calls were made to the Advocate concerned in connection with the Writ Petition. Calling such an explanation on every call by the Management to the Head Master is nothing but over victimizing or interference of Management in day-to-day business of the school.

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There is no evidence brought before the Inquiry Committee to hold guilty for these charges. But the members seem to have anxious to hold the guilty of the charges to the appellant. They have based their conclusion on some thread of evidence ignoring all other

circumstances and evidence in favour of appellant" The Tribunal further stated as under:

(i) Charge No.1, is in respect of not submitting the documents papers asked by the Management particularly pertaining to dead stock.

(ii) Charge No.2 is regarding the Registers and journals regarding school fees, voucher files etc. The accounts of school are audited by the authorized auditor. Under these circumstances, calling these record seems to be only for finding loop holes. This is a sort of interference of the Management in day-to-day work of the school, which is unwarranted. In spite of this, the explanation shows that there is sufficient compliance of direction and there is no insubordination.

(iii) Charge No.3, is not calling meetings of school committee as per code….and the explanation submitted by appellant not calling the meetings is acceptable.

(iv) Charge No.4, is in respect of not forwarding proposal of Shikshan Sevek to the Education Officer. The reasons explained by the appellant are acceptable.

(v) Charge No.5, is in respect of submitting the budget for the year 2001-2002 to the Management without approval of school committee. When the Management has accepted this budget this charge does not survive. As such when the Management has directly accepted the budget and budget proposals, this charge ought not to have been framed at all.

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(vii) Charge No.7, is in respect of not attending the Management council meeting. This charge is also purely technical. The explanation of the appellant is that intimation of meeting was given by the Management at the 11th hour before few hours of the meeting without providing agenda of the meeting…. The explanation needs sympathetic consideration and the allegations if at all considered, cannot be a ground for termination of appellant's service.

(viii) Charge No.8, is in respect of workload of about six hours in a week to be discharged by the Head Master….Explanation given by the appellant is that the hard subjects of science and mathematics were given to new comers as appellant was to retire in near future. He wanted that new man should be well prepared before appellant leaves the school. This explanation is reasonable and acceptable.
In the conclusion, I hold that the evidence on record is not sufficient to hold the appellant guilty of the charges. The net result of the scrutiny of the proceedings is that the inquiry seems to have been initiated on very technical flaws which lead to only conclusion that it was pre-determined and pre-judicial inquiry. As explained above, there is no sufficient proof on record to hold that the charges are proved."

28. The Tribunal, as well as the learned Single Judge of the High Court have recorded a categorical finding of fact to the effect that initiation of departmental enquiry against the appellant had been done with malafide intention to harass him. The charges were not specific and precise; infact, they were vague and unspecific. Furthermore, the Management committee had failed to observe the procedure prescribed in Rules 36 & 37 of Rules, 1981. The said Rules 36 & 37, prescribe a complete procedure for the purpose of holding an inquiry, wherein it is clearly stated that an inquiry committee should have minimum three members, one representative from the Management committee, one to be nominated by the employees from amongst themselves, and one to be chosen by the Chief Executive Officer, from amongst a panel of teachers who have been awarded National/State awards. In the instant case, there was only a two member committee. The procedure prescribed under the Rules is based on the Principles of Natural Justice and fair play, to ensure that an employee of a private school, may not be

condemned unheard. It is pertinent to note that the Management committee failed to prove even a single charge against the appellant.

27. As contended by the learned Government Pleader for Services-IV that Respondent No.3 conducted the enquiry in accordance with Rule 20 of the APCS (CCA) Rules, 1991 and the petitioner was provided an opportunity at every stage as contemplated which can be viewed from the explanation submitted by the petitioner on 16.10.2017 as such the contention of the petitioner that the enquiry was not conducted as per the APCS (CCA) Rules, 1991 and Respondent authorities not observed principles of natural justice are liable to be rejected and not acceptable, that mere submission of explanation by the petitioner do not constitute compliance of principles of Natural Justice. The said contention of the learned Government Pleader for Services-IV is not supported by any evidence except making a bold statement and such reasonable opportunity was said to have been provided only at the time of punishment only. Therefore the contention of the learned Government Pleader is liable to be rejected.

28. The other contention of the learned Government Pleader for Services-IV that the imposition of major punishment as well as recovery of an amount of Rs.27,850/- cannot be canvassed as double punishment for the same offence / punishment, for the reason only one punishment was awarded vide proceedings dated 20.03.2018 and the recovery proceedings for an amount of Rs.27,850/- is only a recovery of misappropriation of funds by the petitioner is also not acceptable and

liable to be rejected, in view of Article 22 of the Constitution of India, a person shall not be punished for the same offence more than once. The rejection order passed in appeal confirming the punishment orders of the Respondent No.3 is a reasoned order, in the absence of any grounds for interference and accordingly the order in appeal cannot be interfered is also contrary to the evidence, material of the case and contrary to the settled proposition law that any order / decision of the quasi-judicial authority should be supported by express reasons. In the present case, no reasons were assigned and not discussed any issue or objections as explained in the explanation. Therefore, the order passed in Appeal is not sustainable and liable to be set-aside, in view of the ratio laid down by the Hon'ble Apex Court.

29. Learned Government Pleader in support of his contention relied upon a decision reported in between **Union of India and others Vs. Const. Sunil Kumar**[3] wherein it was held that;

> *"It is further submitted by learned ASG that in the case of Commandant, 22nd Battalion, CRPF Vs. Surinder Kumar; (2011) 10 SCC 244, it is observed and held by this Court that even in a case when a CRPF personnel is awarded imprisonment under Section 10(n) for an offence which though less heinous he can be dismissed from service after holding departmental enquiry if his conduct is found to be prejudicial to good order and discipline of CRPF. It is submitted that in the aforesaid decision, it is observed and held by this Court that the High Court in exercise of powers of judicial review, Courts should be slow in interfering with the punishment of dismissal on the ground that it was*

[3] 2023 SCC Online SC 56

disproportionate. It is submitted that punishment should not be merely disproportionate but should be strikingly disproportionate to warrant interference by the High Court under Article 226 of the Constitution of India and it is only in an extreme case, where on the face of it there is perversity 1 2023 SCC Online SC 56 7 NV,J W.P.Nos.38882 of 2022 or irrationality that there can be judicial review under Articles 226 or 227 or under Article 32 of the Constitution of India."

30. On perusal of the ration laid down by the Hon'ble Apex Court as mentioned above, do not applicable to the facts of the case in hand. In view of the reasons stated above and on perusal of the material evidence, the entire enquiry said to have been conducted is contrary to Rule 20 of the APCS (CCA) Rules, 1991 and also in violation of principles of natural justice. The imposition of major punishment and also order for recovery proceedings for the same offence is come under the principle of double jeopardy as narrated under Article 22 of the Constitution of India and liable to be set aside.

31. Moreover, the disciplinary authority seems to have been more anxious to hold the guilty of the charges against the petitioner contrary to the facts and circumstances and evidence and also APCS (CCA) Rules, 1991.

32. Finally this Court holds that the entire enquiry as well as impugned proceedings under which the major punishment was awarded are liable to be set aside.

33. Accordingly, the writ petition is allowed. The order passed by Respondent No.3 in Rc.No.875/R2A/2020 dated 20.03.2018 and the proceedings in Rc.No.875/R2A/2010, dated 14.07.2020 and also the order passed by Respondent No.2 in Rc.No.4781/E4-C/2018, dated 03.07.2019 are hereby set-aside. Further, the Respondents are directed to grant all consequential and monetary benefits including promotion without reference to the subject charges, if otherwise she is eligible. There shall be no order as to costs.

34. As a sequel thereto, interlocutory applications pending, if any in the writ petition, shall also stand closed.

JUSTICE VENKATESWARLU NIMMAGADDA

12th January, 2024
KNR

HON'BLE SRI JUSTICE VENKATESWARLU NIMMAGADDA

WRIT PETITION No.24173 of 2020

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